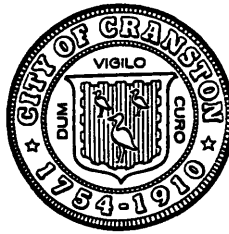


Stephen P. Laffey
Mayor

Michael K. Glucksman
Solicitor



Evan Kirshenbaum
Deputy Solicitor

Vito Sciolto
Assistant Solicitor

Nancy Garcia-Ponte
Assistant Solicitor

Stephen Peltier
Assistant Solicitor

LAW DEPARTMENT

Tuesday, July 25, 2006

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: FEC Complaint No. MUR 5770
City of Cranston's demonstration of why the above-referenced complaint
does not warrant the use of the Commission's limited resources against the
City of Cranston

Dear General Counsel:

I write on behalf of the City of Cranston ("City") in response to a letter that the City received on July 12, 2006 from Jeff S. Jordan, Supervisory Attorney, Complaints Examination & Legal Administration. By his letter, Mr. Jordan informed the City that the National Republican Senatorial Committee ("N.R.S.C.") had filed a complaint against it alleging that it, along with Stephen Laffey ("Laffey") and Laffey US Senate, had violated the Federal Election Campaign Act of 1971 and Federal Election Commission ("Commission") regulations. It is my understanding that Laffey and Laffey US Senate will be responding separately and will address, among other things, the substantive merit of the allegations that a certain mailing improperly promoted Laffey's candidacy for the United States Senate. This response, contrarily, is made solely on behalf of the City and is limited to the propriety of the City's status as a respondent. Nevertheless, to the extent that the City's arguments herein are unpersuasive, and in the event that it is found to be a proper party, the City adopts, incorporates, and relies upon the arguments made by Laffey and Laffey US Senate in their written response, reserving its right to later supplement those arguments if necessary. With that said, the City now turns to its demonstration of why the N.R.S.C.'s complaint does not warrant the use of the Commission's limited resources against it and why, in all events, no action should be taken against the City.

Preliminarily, the City is not a proper party to this proceeding because it is immune from suits filed by private parties before federal agencies. As the United States Supreme Court recently held:

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OFFICE OF GENERAL
COUNSEL

“if the Framers thought it an impermissible affront to a State’s dignity to be required to answer the complaints of private parties in federal courts, we cannot imagine that they would have found it acceptable to compel a State to do exactly the same thing before the administrative tribunal of a[] [federal] agency.” *Federal Maritime Commission v. South Carolina State Ports Authority*, 535 U.S. 743, 760 (2002).

Of course, although it is clear that the N.R.S.C. is a private party and that the Commission is a federal agency, the City is not a State. And, admittedly, the question of whether the City should be considered the functional equivalent of a State for present purposes is a close question. Nevertheless, and while the N.R.S.C. is quite correct in its assertion that the “FEC has made clear in Advisory Opinions and Enforcement Matters (“MURs”) that ‘State governments and municipal corporations are persons under the [federal campaign finance laws] and are subject to its contribution provisions,’” the unique relationship between the City and the State of Rhode Island operates to bring the City under the cloak of the State of Rhode Island’s sovereign immunity. This is true even though the Commission’s definition of “person” includes a corporation, 11 C.F.R. § 100.10, because while the City is a municipal corporation, States, and derivatively their closely-aligned municipalities, cannot be deprived of their fundamental sovereign immunity by the simple expedient of defining it away in a federal regulation. Finally, although the State of Rhode Island has waived its sovereign immunity, as well as that of its municipalities, for purposes of tort claims in federal courts, R.I.G.L. § 9-31-1(a) (“[t]he state of Rhode Island and any political subdivision thereof, including all cities and towns, shall . . . hereby be liable in all actions of tort in the same manner as a private individual or corporation”); *see also Laird v. Chrysler*, 460 A.2d 425, 429 (R.I. 1983) (holding that § 9-31-1 waives both the State’s sovereign immunity with respect to tort actions brought in Rhode Island courts and its Eleventh Amendment immunity with respect to tort actions brought in federal courts), the N.R.S.C.’s complaint surely cannot be properly characterized as an “action[] of tort.” Accordingly, and with all due respect, the City is simply not amenable to the Commission’s jurisdiction and it is not a proper party here.

Furthermore, the N.R.S.C. simply does not make any substantive assertions, nor provide any evidence whatsoever, that the City engaged in any wrongdoing here. In a nutshell, the N.R.S.C. (a) filed a complaint against the City, Laffey, and Laffey US Senate, (b) detailed substantive violations which were committed, if at all, by Laffey and/or Laffey US Senate, and (c) concludes by suggesting that the Commission should open an investigation into whether “Mayor Laffey, Laffey US Senate and the City of Cranston violated the Act and Commission regulations.” What is entirely missing from the N.R.S.C.’s calculus, however, is any substantive allegation of wrongdoing by the City. The cause of the N.R.S.C.’s miscalculation may be its failure to give due regard to the various “hats” worn by Laffey. This is best evidenced by the fact that in its opening allegation the N.R.S.C. complains against “*Stephen Laffey*, Laffey US Senate, and the City of Cranston,” but in its conclusion the N.R.S.C. shifts gears and suggests that the Commission “should immediately open an investigation of this matter and find reason to

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believe that *Mayor Laffey*, Laffey US Senate and the City of Cranston violated" certain election laws. (Emphasis added.) Contrary to the N.R.S.C.'s apparent belief, however, "Stephen Laffey" is not at all times and for all purposes "Mayor Laffey."

As for the N.R.S.C.'s legal analysis, in focusing on the Commission's definition of "coordinated communication," 11 C.F.R. § 109.21(a), the N.R.S.C. blew right past the definition of "coordinated," which means "made in cooperation, consultation or concert with . . . a candidate." 11 C.F.R. § 109.20(a). But in what sense can it be said that the City "coordinated" with Laffey here? Certainly Laffey is the mayor of the City, but the N.R.S.C. improperly infers therefrom that the City necessarily coordinated with him. But there are absolutely no substantive assertions in the N.R.S.C.'s complaint that the City cooperated with Laffey, consulted with Laffey, or acted in concert with Laffey.

Furthermore, the Commission definition of "coordinated communication" requires that the communication be "paid for by a person other than the candidate." 11 C.F.R. § 109.21(a)(1). The N.R.S.C. assumes that because City funds might have been used to pay for the mailing that the City thereby "paid for" that mailing for purposes of its culpability under the election laws. However, even if the Commission were to so interpret the meaning of the phrase "paid for" for purposes of a candidate's culpability, it would be unfair and unjust to so interpret that phrase for purposes of the City's culpability because the plain and usual meaning of the phrase "paid for" implies a degree of knowledge and intent on behalf of the City that is wholly missing here. Thus, and although the City wholeheartedly agrees with the N.R.S.C.'s assertion that "[f]ederal candidates who hold local office are not permitted to use city government resources to finance gratuitous political mailings to promote their federal candidacies," the mere fact that City government resources may have been so used (which is not conceded by the City) does not render the City a culpable party here.

Practically speaking, what would the N.R.S.C. have the City do: hire an outside contractor to vet all City communications with its citizenry? The City Charter, among other law, already prohibits improper use of City resources and the mayor's duties clearly do not encompass personal political messages. Nonetheless, the mayor has the right and duty to communicate with the City's populace and it is well known, as demonstrated in the attachments submitted by the N.R.S.C., that past mayors have sent out similar messages with tax bills. While the N.R.S.C. has certainly demonstrated the City's involvement in this matter, it has just as certainly failed to demonstrate any culpability arising therefrom.

None of the foregoing is meant to suggest that the City would not reasonably cooperate in any Commission investigation. Rather, the City is merely suggesting that it is simply not a proper party here. But even if it was, the case against the City, such as it

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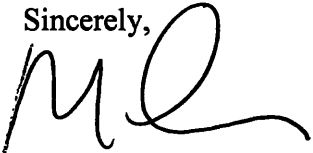
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is, does not warrant the the use of Commission's limited resources and should be dismissed.

In closing, the City states its preference that these matters remain confidential and notes the enclosure within of a duly executed Statement of Designation of Counsel.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Glucksman', with a stylized, flowing script.

Michael K. Glucksman
Solicitor
City of Cranston

Enc.

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FEDERAL ELECTION COMMISSION

Office of General Counsel

999 E Street, NW

Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Witness
FAX (202) 219-3923

MUR: 5770
COUNSEL: Michael K. Glucksman, City Solicitor
FIRM: City Solicitor's Office
ADDRESS: 869 Park Avenue Cranston RI 02910
TELEPHONE - OFFICE: (401) 780-3133
FAX: (401) 780-3157

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

7/25/06
Date

[Signature]
Signature

Mayor
Title

RESPONDENT/WITNESS NAME (PRINT): City of Cranston
MAILING ADDRESS: 869 Park Avenue
Cranston RI 02910

TELEPHONE - HOME: () _____

OFFICE: (401) 780-3110

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation